

WEST VALLEY CITY, UTAH

RESOLUTION NO. 08-107

A RESOLUTION OF THE CITY COUNCIL OF WEST VALLEY CITY, UTAH (THE “CITY”), AUTHORIZING AND APPROVING A PLEDGE OF ITS SALES TAX REVENUES; AUTHORIZING THE EXECUTION BY THE CITY OF AN AMENDED AND RESTATED PLEDGE AND LOAN AGREEMENT AND ANY OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AUTHORIZING AND APPROVING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; PROVIDING A SEVERABILITY CLAUSE; REPEALING RESOLUTIONS IN CONFLICT; PROVIDING AN EFFECTIVE DATE; AND RELATED MATTERS.

WHEREAS, the Utah Interlocal Cooperation Act (the “Interlocal Cooperation Act”), Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the “Utah Code”) provides that two or more public agencies may, by agreement, jointly exercise any power common to the contracting parties; and

WHEREAS, the City, along with other parties (collectively, the “Members”), have entered into an Interlocal Cooperative Agreement of UTOPIA dated as of March 5, 2002 (the “Original Interlocal Cooperative Agreement”), for the purpose of (i) creating the Utah Telecommunication Open Infrastructure Agency (“UTOPIA”) as a separate legal entity; (ii) studying the feasibility of constructing and operating a telecommunications system that would provide high-speed broadband voice, video, and data access for internal use by the Members and to residential and commercial establishments within the boundaries of the Members on a wholesale basis; and (iii) acquiring, constructing, owning, and operating the Network (as defined in the Interlocal Cooperative Agreement (as defined below)); and

WHEREAS, UTOPIA has issued several series of bonds and anticipates issuing additional bonds or other forms of indebtedness (collectively, the “Bonds”) in order to accomplish the acquisition, construction, and equipping of the Network; and

WHEREAS, pursuant to the Interlocal Cooperative Act and the Local Government Bonding Act, Title 11, Chapter 14, Utah Code (the “Bond Act” and collectively with the Interlocal Cooperative Act, the “Act”), the City has authority to finance an interest in improvements, facilities or property to be owned by the municipality or owned jointly by two or more municipalities, and to pledge all or any part of its sales and use taxes to finance said improvements, facilities, or property; and

WHEREAS, to facilitate the financing of the acquisition, construction and equipping of the Network thereby benefiting the City and its inhabitants, the Council has previously and now desires to pledge certain Local Sales and Use Tax funds received by the City pursuant to Title 59, Chapter 12, Part 2, Utah Code (the “Pledged Sales and Use Tax Revenues”) in order to

assure the maintenance, in part, of the Debt Service Reserve Fund established under the Indenture, or to pay to UTOPIA the City's Percentage share of the debt service obligation with respect to the Bonds, all for the purpose of enhancing the marketability of the Bonds issued or to be issued by UTOPIA under the Indenture; and

WHEREAS, the City desires to authorize and approve execution of an Amended and Restated Pledge and Loan Agreement substantially in the form attached hereto as Exhibit B (the "Amended Pledge Agreement"), which amends and restates the Pledge and Loan Agreement heretofore executed by the City; and

WHEREAS, pursuant to the Municipal Cable Television and Public Telecommunications Services Act, Title 10, Chapter 18, Utah Code Annotated 1953, as amended, and the Bond Act, a "Notice of Public Hearing to Consider Pledging Excise Tax Revenues" was duly published; and

WHEREAS, pursuant to provisions of the Act, a public hearing (the "Hearing") with respect to City's consideration of a pledge of its Pledged Sales and Use Tax Revenues, in an amount of not to exceed, in any one Bond Fund Year (as defined in the Amended Pledge Agreement), the City's Percentage of the Debt Service Reserve Fund Shortfall (as defined in the Amended Pledge Agreement) as expressed in the Amended Pledge Agreement, or the Debt Service Obligation (as defined in the Amended Pledge Agreement) was held on _____, 2008.

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of West Valley City, Utah, as follows:

Section 1. The terms defined or described in the recitals hereto shall have the same meanings when used in the body of this Resolution.

Section 2. All actions heretofore taken (not inconsistent with the provisions of this Resolution), by the City and by the officers of the City directed toward the pledge of the Pledged Sales and Use Tax Revenues and the approval and adoption of the Amended Pledge Agreement are hereby ratified, approved, and confirmed.

Section 3. The Amended Pledge Agreement in substantially the form attached hereto as Exhibit B is in all respects hereby authorized and approved, and the Mayor and City Recorder are hereby authorized and directed to execute and deliver the same on behalf of the City.

Section 4. For the purpose of securing, in part, the Debt Service Reserve Fund established or to be established with respect to the issuance of Bonds by UTOPIA or the payment of the Debt Service Obligation, the City hereby authorizes a pledge of the Pledged Sales and Use Tax Revenues pursuant to the Amended Pledge Agreement in accordance with the terms and provisions thereof.

Section 5. Bonds already issued and those issued in the future will constitute special limited obligations of UTOPIA payable solely from and to the extent of the sources set forth in the Bonds and proceedings adopted by UTOPIA to issue the Bonds. No provision of this Resolution, the Bonds, or any other instrument, shall be construed as creating a general

obligation of the City, or as incurring or creating a charge upon the general credit of the City or its ad valorem taxing powers.

Section 6. The appropriate officials of the City, and each of them, are hereby authorized and directed to execute and deliver for and on behalf of the City any or all additional certificates, documents, and other papers and to perform all other acts they may deem necessary or appropriate in order to implement and carry out the matters authorized in this Resolution and the documents authorized and approved herein.

Section 7. This Resolution shall be and remain irrevocable until the Amended Pledge Agreement terminates in accordance with its terms.

Section 8. So long as the maximum payment obligation of the City set forth in Section 2.1 of the Amended Pledge Agreement is not increased, the form of Amended Pledge Agreement and the other documents authorized and approved hereby are authorized and approved with such additions, modifications, deletions and changes thereto as may be deemed necessary or appropriate and approved by the Mayor, whose execution thereof on behalf of the City shall conclusively establish such necessity, appropriateness and approval with respect to all such additions, modifications, deletions and changes incorporated therein.

Section 9. It is hereby declared that all parts of this Resolution are severable, and if any section, clause, or provision of this Resolution shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, clause, or provision shall not affect the remaining sections, clauses, or provisions of this Resolution.

Section 10. All resolutions, orders, and regulations or parts thereof heretofore adopted or passed which are in conflict herewith are, to the extent of such conflict, hereby repealed. This repealer shall not be construed so as to revive any resolution, order, regulation, or part thereof heretofore repealed.

Section 11. This Resolution shall take effect immediately upon its approval and adoption.

PASSED, APPROVED, and MADE EFFECTIVE this _____ day of _____, 2008.

WEST VALLEY CITY

MAYOR

ATTEST:

CITY RECORDER

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH
OPEN MEETING LAW

I, _____, the undersigned City Recorder of [City], Utah (the "City"), do hereby certify, according to the records of the City in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-202, Utah Code Annotated, 1953, as amended, I gave not less than twenty-four (24) hours public notice of the agenda, date, time and place of the _____, 2008, public meeting held by the City as follows:

(a) By causing a Notice, in the form attached hereto as Schedule 1, to be posted at the Issuer's principal offices on _____, 2008, at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting; and

(b) By causing a copy of such Notice, in the form attached hereto as Schedule 1, to be delivered to the [Newspaper] on _____, 2008, at least twenty-four (24) hours prior to the convening of the meeting.

In addition, the Notice of 2008 Annual Meeting Schedule for the City (attached hereto as Schedule 2) was given specifying the date, time and place of the regular meetings of the City Council to be held during the year, by causing said Notice to be posted on _____, 20____, at the principal office of the City and by causing a copy of said Notice to be provided to at least one newspaper of general circulation within the City on _____, 20____.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this _____ day of _____, 2008.

(SEAL)

By: _____
City Recorder

SCHEDULE 1

NOTICE OF MEETING

SCHEDULE 2

NOTICE OF ANNUAL MEETING SCHEDULE

EXHIBIT B

AMENDED AND RESTATED PLEDGE AND LOAN AGREEMENT

(See Transcript Document No. ____)